

Rocky Flats Citizens Advisory Board Recommendation 95-12

**to the Department of Energy, the Environmental Protection Agency, and the Colorado
Department of Public Health and Environment**

Rocky Flats Cleanup Agreement: Negotiations and Six Major Outstanding Issues

Approved October 5, 1995

(The phrases identified with bullets are the specific recommendations. The remaining narrative provides background information, explanation and reasoning behind the Rocky Flats Citizens Advisory Board's recommendations.)

Introduction

Discussion of a new cleanup agreement for Rocky Flats began almost two years ago. In June of 1994, the Rocky Flats Citizens Advisory Board (CAB) submitted a Community Values paper reflecting its views on issues and topics to be included in the cleanup negotiations. Presently, CAB and other community interests are being asked once again to comment and provide views on values and issues associated with the cleanup agreement in advance of a special "work out session" to be held in early October. CAB is dismayed with the lack of progress over the past year in negotiating a new cleanup agreement for Rocky Flats. CAB further finds the public participation over this same time period to have been ineffective. A result of this ineffectiveness to involve stakeholders over the past year is that CAB is being asked to repeat input that was made over a year ago.

In addition, there is new complicating factor in a speedy resolution to finalizing the RFCA negotiations. This complication is the recent unveiling of an "Interim End State" (IES) and the "Site-Wide Environmental Strategy Agreement" (SWESA) by DOE and Kaiser-Hill. Ideally, positions such as these should come at the beginning of a negotiating process and not the end. Both of these concepts are dramatic departures from the current line of discussion. If they are meant to be serious proposals, just as for any other major issue at any time, there needs to be adequate review and comment by external stakeholders. It does not make sense to proceed with the Rocky Flats Cleanup Agreement (RFCA) in its current form if IES or SWESA have any chance of implementation. Otherwise, major revisions would have to be made and we would likely have to repeat, for yet another time, this same input process.

Finally, CAB finds it extremely important that there be accountability to the public particularly in view

of the upcoming work out session with the RFCA principals. A timely and thorough response will enable CAB and other external stakeholders to readily identify the status of its input.

Therefore, the Board recommends:

- Finding a quick resolution to the RFCA negotiations. No more stalling. It is time to get on with the work at Rocky Flats.
- Providing CAB and other external stakeholders with a simple, short summary identifying the impacts of the IES and the SWESA to the current RFCA negotiations/processes if one or both of these new programs were to be implemented. The document should be received no later than November 10, 1995.
- Delivering a response mechanism immediately following the work out session that provides a point-by-point status of each of the recommendations to follow comparing CAB's input to the work out session output. This response should be received no later than October 16, 1995.

SIX MAJOR OUTSTANDING ISSUES

Scope of RFCA

Issue: How should the RFCA facilitate integrated management of the site, given that the parties agree that the site will be managed in an integrated manner?

The problem with the current Interagency Agreement (IAG) is that it does not address the site in its totality. Now that there is a single mission at Rocky Flats, RFCA should address all parts of that mission. It should be comprehensive and all inclusive. We must learn from the mistakes of the past, and not having a comprehensive cleanup agreement is a demonstrated mistake that can be corrected in the new RFCA. As already recommended in CAB's Community Values, the Board recommends:

- Including all site activities in the new cleanup agreement.

Plutonium Disposition

Issue: What can be done to ensure removal of plutonium from the site at the earliest practical date?

CAB acknowledges that this is a national issue, but at the same time points out that Rocky Flats is not the best place to store plutonium. The Board recommends:

- Developing a process to define the political and technical considerations for plutonium removal. There should be full participation by CAB and other external stakeholders as this process is being developed, including a facilitated public discussion, locally and nationally, on plutonium disposition.
- Setting milestones in areas where the presence of nuclear materials would impact cleanup. For

instance a building cannot be remediated with the materials present. The regulators could set milestones that dictate when cleanup must be finished for that building. If the materials are not out in a timely manner, then the milestone will be missed.

Plutonium Milestones

Issue: How can RFCA ensure that the parties achieve activities necessary to ensure safe interim storage of nuclear material at Rocky Flats?

CAB might accept storage during an interim time-period, but only on the condition that the materials be made as safe as possible, as quickly as possible. Enforceable milestones would serve to ensure that this happens. The Atomic Energy Act may give authority to DOE to handle special nuclear materials, but CAB does not believe it gives them the authority to "mishandle" them.

As previously stated in its Community Values piece, the Board recommends:

- Including plutonium milestones connected with stabilization and treatment to make the plutonium safer in an enforceable agreement.

In-Building Cleanup / Non-ER Activities

Issue: Should there be a process for regulator approval of in-building cleanup activities and other non-environmental restoration activities? If so, what should that process be?

DOE has little experience in decommissioning nuclear weapons production facilities. There are many unknowns on the best way to address these actions. Since buildings represent a potential source of contamination to the environment, they must be part of the cleanup program. Therefore, CAB agrees that a process for regulator approval of in-building cleanup activities and other non-environmental restoration activities must be developed. The Board recommends:

- Identifying a regulator(s) to oversee standards development for decommissioning, decontamination, transitioning, and all other activities which fall under this category; approve the standards; and regulate the activities. The standards should be flexible to allow for change and process improvements.

Budget

Issue: Will enforceable milestones be changed as a result of a Rocky Flats budget shortfall?

One of the lessons learned from the past is that DOE has prioritized activities based on milestone compliance. When funding cuts came, the first activities to be cut were those that were not based on some kind of compliance program. To remedy this situation, there must be a mechanism to identify what

needs to be done, and then money must be requested to do that work.

Additionally, in its Community Values, CAB promoted the concept of having a three-year planning process. This three-year cycle still makes sense from the standpoint that milestones are set based on current information, and not on a vision of what things will be like in the future. Another lesson learned from the past is that milestones that are set far in the future only necessitate renegotiation as new situations and events arise.

Most importantly, one of the points made at the March '95 Rocky Flats Summit was that this community would not "roll over on budget cuts." Adequate funding of weapons complex sites is a national issue. The federal government created the mess at Rocky Flats and holds the responsibility for cleanup. Budget cutting is not an excuse for not accomplishing this work. Congress, as part of the federal government, must be made aware of the serious consequences (i.e. a plutonium criticality or further spread of contamination into the environment which would increase the cost of cleanup as well as the health and safety risks to the workers and the general public) of not providing funds necessary to complete legally enforceable milestone agreements.

With regards to methods of enforcement, it is not desirable for one agency of the government to levy fines against another. CAB understands the potential need for fines as a deterrent to the breaking of laws or agreements, but fines should be levied only as a last resort. Therefore, the Board recommends:

- Involving CAB and other stakeholders up front in the identification and prioritization of activities.
- Once the regulators, DOE and the stakeholders have agreed on a course of action for a given fiscal year, with enforceable milestones in place, DOE must fight to get the funding needed to accomplish the work. Regardless of a shortfall, DOE (like private industry) is responsible for finding a way to get the work accomplished.
- Developing new methods of accountability and enforceability, for DOE, as part of the agreement to ensure that milestones are met.

Kaiser-Hill as a Party to RFCA

Issue: Should Kaiser-Hill be a signatory to the cleanup agreement?

The Contractor is accountable to the Department of Energy. Nevertheless, there must be a mechanism to ensure that Kaiser-Hill is held accountable for getting the necessary cleanup work done in a timely and efficient manner. It may be that the contract provisions will do this. Kaiser-Hill is responsible and should be held accountable for carrying out the work, while DOE must be held accountable for the plans.

The Board recommends that:

- Kaiser-Hill should not be a signatory to RFCA.
- If Kaiser-Hill fails to perform, Kaiser-Hill should be held responsible, and fines or other assessments should be charged that would come out of corporate profits and not from taxpayer dollars.

The Rocky Flats Citizens Advisory Board is a community advisory group that reviews and provides recommendations on cleanup plans for Rocky Flats, a former nuclear weapons plant outside of Denver, Colorado.

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